IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3695 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL NARENDRABHAI BHAILALBHAI

Versus

STATE OF GUJARAT

Appearance:

MR RC JANI for Petitioners

MR K.G.SHETH, Learned APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. The petitioners abovenamed have preferred this petition under Section 482 of the Criminal Procedure

Code, 1973 for quashing F.I.R. being C.R.. No. 195 of 2000 registered at Mehasana Taluka Police Station against the petitioners for offence punishable under Section 16(1) of the Prevention of Food Adulteration Act, 1954 stating that the F.I.R. is not legally maintainable and it deserves to be quashed and set aside.

2. The facts of the case may briefly be stated as under :

That on 2.4.2000, the informant PSI Mr. Solanki had taken out search on information that the prohibited liquor is being stored at the place indicated in the F.I.R.. During the visit, it was found that there were certain containers as well as gas cylinder and stove for preparing ghee. Therefore, efforts were made out to find Food Inspector, but since it was closed Saturday Food Inspector was not available and, therefore, the said informant seized those instruments and other articles and filed F.I.R. against the petitioners for the aforesaid offences. The said F.I.R. has been challenged in this petition.

On receiving the petition, rule was issued and Mr. K.G.Sheth, learned APP appears for State. I have heard learned advocates for the parties and have perused the papers.

Now, it is clear that the provisions made under the Prevention of Food Adulteration Act, 1954 (for short "the said Act") clearly shows that cognizance is required to be taken on the basis of the complaint under Section 20 of the said Act. Here, the F.I.R. has been filed under Section 154 of the Criminal Procedure Code. Another difficulty that come in the way of the prosecution is that under the said Act and Rules under the said Act, samples are required to be collected in three parts. Therefore, the procedure for collecting samples does not appear to have been followed. Then there is a provision for addition of adequate quantity of preservative for proper preservation of the food sample collected. That does not appear to have been followed and F.I.R. does not show that the preservative was added in the sample in the instant case. Moreover, the informant does not appear to be a person qualified for collecting samples and filing complaint against the petitioner.

3. In the aforesaid view of the matter, I am of the view that there is apparent violation of the provisions made under the said Act and Rules made thereunder.

Moreover, cognizance is required to be taken on complaint and not on a report filed under Section 173 of the Criminal Procedure Code. The informant is not a person qualified under the said Act. He is not a Food Inspector and also he is not a purchaser of the sample and, therefore, it would be difficult to sustain the F.I.R. The complaint, if it is not filed by the informant, it is impermissible for Police Investigation Agency to conduct the investigation since cognizance is required to be taken on the basis of the complaint and not on the report under Section 173 of the Criminal Procedure Code. Therefore, there are several infirmities in the F.I.R.

4. Mr. K.G.Sheth, learned APP appeaing for State is unable to state as to how the said F.I.R. can be saved. The result is that the said F.I.R. suffers from aforesaid infirmities. Therefore, the same is required to be quashed and set aside. Petition is allowed and the aforesaid F.I.R. being C.R.. No. 195 of 2000 registered at Mehasana Taluka Police Station against the petitioners is ordered to be quashed and set aside. Rule made absolute with no order as to costs.

(D.P.Buch,J)

(vipul)